

DELAWARE RIVER BASIN COMMISSION

MEETING OF DECEMBER 12, 2006

Minutes

The Commission met at the offices of the Delaware River Basin Commission in West Trenton, New Jersey.

Commissioners present: Lt. Col. Gwen E. Baker, Chair, United States
Cathy Curran Myers, Vice Chair, Pennsylvania
William A. Gast, Pennsylvania
Mark N. Mauriello, Second Vice Chair, New Jersey
Michele Putnam, New Jersey
Joseph Miri, New Jersey
Mark Klotz, New York
Harry W. Otto, Delaware

DRBC Staff participants: Carol R. Collier, Executive Director
Robert Tudor, Deputy Executive Director
Kenneth J. Warren, DRBC General Counsel, Wolf, Block, Schorr &
Solis-Cohen
Pamela M. Bush, Commission Secretary/Assistant General Counsel
Richard K. Fromuth, Operations Branch Head
Richard C. Gore, Chief Administrative Officer
William J. Muszynski, Project Review Branch Head
Kenneth F. Najjar, Ph.D., Planning and Implementation Branch
Head

Chairwoman Lt. Col. Gwen E. Baker convened the business meeting at 1:30 p.m.

Minutes. Lt. Col. Baker called for a motion to approve the Minutes of the Commission's meeting of September 27, 2006. Dr. Otto so moved, Mr. Klotz seconded his motion, and the Minutes of the September 27, 2006 Commission Meeting were approved by unanimous vote.

Announcements. Ms. Bush announced the following upcoming meetings:

- *DRBC Flood Advisory Committee (FAC).* The FAC meets on Wednesday, February 7, 2007 at 10:00 a.m. in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey. The staff contact is Rick Fromuth, (609) 883-9500, ext. 232.
- *2007 Delaware Estuary Science Conference.* Sponsored by the Partnership for the Delaware Estuary, this conference will be held on January 22-24, 2007 at The Grand Hotel in Cape

May, NJ. For additional information, please check the Partnership's web site at www.delawareestuary.org.

- *Next Commission Meeting.* The Commission's next business meeting and public hearing will take place on Wednesday, February 28, 2007 in the Goddard Conference Room, DRBC, 25 State Police Drive, West Trenton, New Jersey.

Hydrologic Conditions. Mr. Fromuth reported on hydrologic conditions in the Basin.

The observed precipitation for the Delaware River Basin above Montague, New Jersey for the period January 1 through December 10, 2006 was 50.05 inches, or 9.05 inches above normal. For the same period, rainfall for the Delaware River Basin above Trenton, New Jersey was 52.65 inches or 10.21 inches above normal, and in Wilmington, Delaware, precipitation measured 47.55 inches or 7.05 inches above normal.

The average observed streamflow of the Delaware River at Montague, New Jersey in November 2006 was 12,584 cubic feet per second (cfs), or 290.2 percent of the long-term average for the month. The average observed streamflow at Trenton, New Jersey in November was 26,193 cfs, or 250.9 percent of the long-term average for the month.

For the period from December 1 through December 10, 2006, the average observed streamflow of the Delaware River at Montague was 8,089 cfs, or 164.5 percent of the long-term average for the month. The average streamflow at Trenton during the same period was 16,720 cfs, or 147.8 percent of the long-term average for the month.

In the Lower Basin, as of December 11, 2006, Beltzville Reservoir contained 13.04 billion gallons (bg) usable, or 100.3 percent of usable storage, and Blue Marsh contained 4.83 bg usable, or 101.5 percent of winter pool usable storage. Merrill Creek contained 15.425 bg usable, or 98.3 percent of usable storage.

In the Upper Basin, as of December 11, 2006, Pepacton Reservoir contained 139.032 bg usable, or 99.2 percent of usable storage. Cannonsville contained 95.265 bg usable, or 99.5 percent of usable storage. Neversink contained 31.648 bg usable, or 90.6 percent of usable storage. Total New York City Delaware Basin reservoir storage was 265.945 bg usable, or 98.2 percent of usable storage.

As of December 8, 2006 the average ground water level in eight reported USGS observation wells in the Pennsylvania portion of the Basin was above the long-term average. Water levels expressed as 30-day moving averages at seven of these wells were within their normal ranges for this time of the year. Water levels at the remaining well were above their normal range. Water levels at the Cumberland County, New Jersey coastal plain observation well were above the normal range. Water levels at the New Castle County, Delaware coastal plain observation well were within their normal range as of October 18, the date last observed.

During the month of November 2006, the location of the seven-day average of the 250-parts per million (ppm) isochlor, also known as the "salt line," ranged from river mile (RM) 63 to RM 68. The normal location of the salt line during November is RM 80, a location which is two miles upstream of the Delaware-Pennsylvania state line. As of December 7, 2006, the salt line was located

at RM 63, six miles downstream of the Delaware Memorial Bridge. This location is eleven miles downstream of the normal location of the salt line for December.

Executive Director's Report. Ms. Collier's remarks are summarized below:

- *New DRBC Staff Members.* Ms. Collier introduced Kent Barr, Water Resources Assistant in the Planning and Implementation Branch, who lives in Titusville, New Jersey. Kent has a bachelor's degree in forestry from the University of New Hampshire and a master's in forestry economics from the University of Washington and has conducted field work in carbon accounting and wood harvesting. He currently is assisting DRBC with tasks related to the Pennsylvania State Water Plan and the U.S. Army Corps of Engineers multi-jurisdictional study. Aquatic biologist Dr. Erik Silldorff of Doylestown, PA recently joined the Monitoring and Modeling Branch. Erik earned his bachelor's degree in natural resources at Cornell University and his master's in aquatic statistics from the University of California at Santa Barbara. He earned his Ph.D. in stream ecology, also at the University of California. Erik has a strong fisheries background and extensive field experience. He will work with the Subcommittee on Ecological Flows on instream flow matters in the upper basin and on monitoring tasks throughout the basin. The Commission is also host to an Americorp representative, Lorna Gifis, who is a participant in the New Jersey Watershed Ambassadors Program. Lorna will be with the DRBC until August 2007. While attending Middlebury College Lorna was an all-American on the women's ice hockey team, which won the national championship two years in a row. Katharine O'Hara, who has worked for the Commission for several months now in both the Planning and Communications branches is now a full-time member of the Communications Branch.
- *Acid Mine Remediation Project – Mary D.* DRBC participated in a well attended press event on an acid mine remediation project in the town of Mary D (population 200-400), at the headwaters of the Schuylkill River in Schuylkill County, Pa. The project was financed in significant part with funds from a DRBC settlement with Exelon. Other substantial contributors included the Commonwealth of Pennsylvania and The William Penn Foundation. A large group of watershed associations and state and federal agencies participated in the project, which will benefit stream quality throughout the Schuylkill River. In addition, Mary D now has a new recreation facility with a lighted ball field, dugouts and basketball courts. Bill Muszynski, Bob Tudor and Chad Pindar provided technical support for the project, and Kate O'Hara helped to coordinate the press event.
- *GAO Interstate Compact Study.* During the last week of November the Commission hosted two visitors from the U.S. Government Accountability Office (GAO) for two days. The visit occurred in the context of a study of interstate compact agencies, with a focus on value added and public accountability. The GAO's team initially conducted a broad written survey and subsequently performed phone interviews with 50 short-listed agencies. The team then made site visits to four different interstate commissions, interviewing staff, commissioners and stakeholders. The GAO study should be available in February or March of 2007.
- *DRBC 2006 Milestones – Flood Response.* Following the third major flood on the main stem Delaware River in as many years last June, DRBC reprioritized its efforts. In late September, the governors tasked the Commission with assembling an interstate-federal flood mitigation task

force to produce a set of consensus recommendations by the end of the year. Bob Tudor has led this effort. The final technical meeting will take place on December 20 and a draft report will be released in January. The states also joined together in committing funds for DRBC to develop a reservoir operations model that is needed to develop strategies for flood mitigation. DRBC Operations and Communications branch staff, along with Bob Tudor, have devoted extensive time to outreach, including explaining the causes of the floods, reservoir operations, and the importance of flood plains, among other flood-related topics. DRBC also is engaged in a project funded by the New Jersey Office of Emergency Management (OEM) to help four New Jersey counties develop flood mitigation plans. To date, staff has held meetings with key officials in each county.

- *Flow Management.* In the area of flow management, staff has devoted significant effort to the development of a Flexible Flow Management Program (FFMP) for the NYC Delaware Basin reservoirs to replace the current fisheries releases program, which will expire at the end of May 2007. The FFMP is intended to be a multi-objective plan, addressing drought management, flood mitigation and instream flow needs in the upper, middle and lower portions of the basin. In accordance with the Delaware River Basin Compact, adoption of the new FFMP would require, in addition to the Commission's approval, the approval of the parties to the 1954 U.S. Supreme Court Decree in *New Jersey v. New York*, which include the States of Delaware, New Jersey and New York, the Commonwealth of Pennsylvania and the City of New York.
- *Water Supply.* DRBC is working with Pennsylvania DEP in the development of the Pennsylvania State Water Plan and with the Army Corps of Engineers on the so-called "Million Dollar Study."
- *PCBs.* The Commission is implementing the Pollutant Minimization Plan Rule, currently involving 41 dischargers. At the request of dischargers, staff will participate in a January workshop on the PMP annual report requirement. Staff has completed and submitted to the states and EPA its PCB TMDL report for water quality zone 6 – the Delaware Bay. DRBC continues to work at resolving the few thorny issues remaining with the Implementation Advisory Committee report and is proceeding with development of the Stage 2 TMDL for Zones 2-6. Bill Muszynski is leading the DelTRiP effort, which entails an investigation of hazardous waste site remediation at the state and federal levels within the basin, in order to prioritize further work at those sites to characterize and contain ongoing PCB releases. DelTRiP's second annual report will be issued shortly. In these various PCB-related efforts the Commission is grappling with two major issues. First, it faces the question of how to implement a water quality criterion that cannot be attained for decades. The DRBC held a co-regulators workshop with EPA and the states to develop a conceptual strategy for establishing and implementing a uniform PCB criterion for the estuary, with the understanding that the criterion cannot be attained within a single NPDES permit cycle through the imposition of numeric limits on point source dischargers. The second major issue the regulators face in addressing PCBs is contending with the diverse sources of these pollutants, including air deposition, contaminated sites and stormwater runoff.
- *Special Protection Waters.* The non-tidal lower Delaware River is temporarily designated as Special Protection Waters. Staff is working on refinements to its approach to implementing the SPW program through development of a Special Protection Waters guidance manual.

- *Integrated List.* The 2006 Integrated 305(b) and 303(d) Water Quality Monitoring and Assessment Report for the Delaware River and Bay was completed in the fall.
- *Shellfish.* Progress has been made on dwarf wedgemussel research in the main stem and oyster bed improvement through a shell planting program in the Delaware Bay.
- *State and Federal Funding.* For FY07 New York State is contributing its full fair share of the DRBC's operating expenses for the first time in six years. A new process for funding specific projects through the Army Corps of Engineers has been established and is being used in connection with the Million Dollar Study. DRBC is working to invigorate the congressional task force and keep in touch with basin congressional representatives as the new congress takes up its work in 2007. Unfortunately, a Water Resources Development Act (WRDA) was not enacted in 2006, so this legislation will require continued effort.
- *Additional Accomplishments.* This year the Commission completed 120 dockets. DRBC has instituted new time reporting practices tied to the Basin Plan, the water resources program, which is a six-year strategic plan, the annual work plan, the budget and individual staff work plans. A final design will soon be completed and available for review for the Ruth Patrick River Garden in the DRBC courtyard. The garden will be a tool for helping people understand the basin and water management, in addition to making much better use of the DRBC's courtyard space. A final design for the stormwater retrofit project was completed and a bid request issued. Because the bids came in at a cost nearly twice as high as anticipated, the work will be re-bid in January or February. An audit of the HVAC system and energy demand is being undertaken, which will generate alternatives to be considered for improving energy efficiency and comfort in the DRBC building. A scope of work has been initiated for improving the Commission's data management system as well, to allow DRBC's various branches to work better together and with other agencies. A Federal Coordination Summit conducted on July 20 was discussed during the morning's conference session. A State of the Basin report will be issued in 2007.

General Counsel's Report. Acknowledging the efforts of Pam Bush and Bill Muszynski in responding to an appeal by the Brodhead Creek Regional Authority (BCRA), Mr. Warren reported that three of the four issues raised in the appeal had been resolved by a letter agreement with the BCRA. First, BCRA agreed that it would pay for surface water in accordance with DRBC's water supply regulations, but it reserved the right to dispute in a separate proceeding DRBC's interpretation of those regulations. Second, BCRA agreed to implement a monitoring program, and third, BCRA and the DRBC staff reached agreement as to the nonpoint source control plan requirements of DRBC's regulations. Mr. Warren explained that no formal action was required of the commissioners but invited them to comment or raise questions or concerns. The commissioners offered none. He proceeded to explain that the fourth item of the appeal regards Pennsylvania's water allocation permit, an appeal that is likely to be dropped when Pennsylvania resolves the matter directly with the applicant. The commissioners agreed that this fourth matter should be left in abeyance, with the expectation that it would be dismissed upon resolution of the item with PADEP. Lt. Col. Baker invited any comments or questions on the BCRA matter. None were offered.

The second issue involved an appeal by Moyer Packing Company (MOPAC) of a docket approved in September. MOPAC appealed the TDS limit of 1,000 milligrams per liter imposed by the docket. The docket sets forth one mandatory measure and two measures to be taken at MOPAC's option for

ameliorating potential damage to downstream property resulting from its TDS discharge. Mr. Warren recommended that the commissioners grant MOPAC's request for a hearing and require that the hearing be conducted on an expedited basis so that the hearing officer's recommendation and any oral arguments in response to that recommendation could be made at the Commission's meeting on February 28, 2007. Mr. Warren stated that the docket would remain in effect while the appeal was ongoing. In accordance with the Commission's regulations, he said that MOPAC should be required to post security for the appeal in an amount to be determined by the Commission's administrative officer and to post that security with Mr. Gore within ten days of MOPAC's receipt of notice of his determination of the amount. Mr. Warren recommended that the executive director be given the discretion to select the hearing officer in consultation with the parties involved. He noted that the downstream property owner – Mainland Golf Course (MGC) – had filed a motion to intervene in the appeal and recommended that the motion be granted, since the golf course has an interest that would be directly affected by the TDS limitation and also by MOPAC's implementation or failure to implement the requirements of the docket.

Lt. Col. Baker invited comments or questions. Mr. James Couch, Senior Director of the Smithfield Beef Group, thanked the Commission on behalf of MOPAC for the opportunity to be heard. He said that MOPAC supported the general counsel's recommendation that its appeal be heard on an expedited basis and added that through the good offices of Bill Muszynski, MOPAC had been negotiating diligently with MGC to comply with the docket requirement that it provide the golf course with an alternative water supply. MOPAC noted that it had requested an informal hearing with the Commission as well in order to respond promptly. He thanked the Commission for allowing Mr. Muszynski to work as a facilitator between MOPAC and MGC and expressed his confidence that with the Commission's cooperation and assistance, MOPAC would be able to provide MGC with an alternative water supply, thereby resolving the matter.

Hearing no further comments, Lt. Col. Baker requested a motion to accept Mr. Warren's recommendations. Ms. Myers moved that the Commission grant an expedited appeal to Moyer Packing and that it grant MGC's motion to intervene, with the condition that the current docket remain in effect. Mr. Warren suggested that the commissioners also require MOPAC to post security in an amount to be determined by Mr. Gore. Ms. Myers amended her motion accordingly. Dr. Otto seconded the motion, which was approved by unanimous vote.

Public Hearing: Project Review Applications. Mr. Muszynski reported that one of the seventeen dockets originally scheduled for hearing – Docket No. D-2002-10 CP-2 for Upper Hanover Authority – was postponed to allow additional time for review. Two dockets involved projects in the State of Delaware, three involved projects in New Jersey, one involved a project in New York and eleven involved projects in Pennsylvania. Docket D-2006-7 CP-1 (hearing item 14) for the Delaware River Joint Toll Bridge Commission involves a project located in both New Jersey and Pennsylvania.

Brief descriptions of the dockets follow, in three categories. Four entail renewals with no substantive changes, such as a replacement well with no increase or decrease in allocation. Six constitute renewals with substantive changes, such as an increase or decrease in an authorized withdrawal or discharge. Six constitute new projects, defined as projects not previously reviewed by the Commission.

Renewals with No Substantive Changes (4).

1. Matamoras Municipal Authority D-81-78 CP-6. An application to expand the existing service area to include property within Westfall Township north and south of Mountain Avenue. The applicant requests to retain the existing allocation of 11.7 million gallons per thirty days (mg/30 days) from existing Wells Nos. 3, 5, 7, 8 and 8A. The project is located in Matamoras Borough and Westfall Township, Pike County, Pennsylvania within the drainage area to a section of the non-tidal Delaware River known as the Middle Delaware, which is classified as Special Protection Waters.
2. Joseph Jackewicz, Sr. D-91-53-2. An application for the renewal of a ground and surface water withdrawal project to continue withdrawal of 219.8 mg/30 days to supply the applicant's agricultural irrigation system from replacement Well No. Townsend 3, eight existing wells and one existing surface water intake. The project is located in the Tidbury Creek, Cypress Branch and Double Run watersheds in the Town of Magnolia, Kent County, Delaware.
3. Magnesium Elektron, Inc. D-94-73-2. An application for approval of a ground water withdrawal project to supply up to 9.8 mg/30 days of water to the applicant's industrial facility and ground water remediation project from new Well No. 9 and to retain the existing withdrawal from all wells of 9.8 mg/30 days. The project is located in the Lockatong Formation in the Wickechoeke Creek Watershed in Kingwood Township, Hunterdon County, New Jersey and within the drainage area to the section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
12. Artesian Water Company D-2003-22 CP-3. An application for approval of a ground water withdrawal project to supply up to 8.7 mg/30 days of water to the applicant's public water supply distribution system from new Well Thomas Cove 2 and to retain the existing withdrawal from all wells in 9 wellfields in the applicant's Southern Distribution System of 150 mg/30 days. The project is located in the Mt. Laurel Formation in the Appoquinimink River Watershed in New Castle County, Delaware.

Hearing no questions or comments, on Mr. Muszynski's recommendation, Lt. Col. Baker called for a motion to approve hearing items 1, 2, 3 and 12. Mr. Mauriello so moved, Dr. Otto seconded his motion, and the four dockets were approved by unanimous vote.

Renewals with Substantive Changes (6).

4. Horsehead Corporation D-67-196-2. An application for a change of ownership and a docket modification for the discharge of non-contact cooling water, boiler blow-down, and effluent from metal recovery zones (MRZs) for the Palmerton East Plant. The discharges consists of approximately 0.15 million gallons per day (mgd) of non-contact cooling water from Outfall 004, 0.31 mgd of non-contact cooling water and boiler blow-down from Outfall 005, a 0.128 mgd MRZ discharge from Outfall 015, a 0.036 mgd MRZ discharge from Outfall 019 and a 0.040 mgd MRZ related discharge from Outfall 022. The discharges from Outfall Nos. 004, 005, 015, 019 and 022 are to the Aquashicola Creek, which is a tributary to the Lehigh River.

The discharges are located in the drainage area of the Lower Delaware Special Protection Water Area. The facility is located in Palmerton Borough, Carbon County, Pennsylvania.

5. Cabot Corporation D-70-72-3. An application for approval to modify planned improvements to the applicant's industrial wastewater treatment plant (IWTP) upgrade project, approved by the Commission on October 24, 2004, and to implement manufacturing operation improvements necessary to meet water quality objectives in Swamp Creek. The applicant produces inorganic chemicals and primary nonferrous metals and alloys at its Boyertown Facility, which is located off Swamp Creek Road and straddles the borders of Douglass Township, Montgomery County and Colebrookdale Township, Berks County, both in Pennsylvania. Based upon revised production rate projections, the applicant has determined that modification of the existing IWTP would be more cost effective than constructing new facilities. In addition, the average design flow is proposed to be reduced to 0.15 mgd from the previously approved 0.222 mgd. The plant effluent, along with storm water, cooling water and water supply treatment wastewater, will continue to be discharged via the existing outfall to Swamp Creek in the Schuylkill River Watershed. The project is located within the Southeastern Pennsylvania Ground Water Protected Area, within the drainage area of a portion of the Schuylkill River that is conditionally designated as "Modified Recreational" in DRBC's Comprehensive Plan.
6. Village of Deposit D-74-57 CP-2. An application for approval of a wastewater treatment plant (WWTP) expansion project to provide secondary treatment to up to 0.7 mgd, a proposed increase of 0.1 mgd from the existing capacity. The WWTP discharges effluent to the West Branch Delaware River in DRBC Water Quality Zone W1. The project is located in the Upper Delaware Special Protection Waters drainage area in the Village of Deposit, Broome and Delaware Counties, New York. The WWTP will continue to serve the Village of Deposit and may serve the Town of Deposit, Delaware County, New York in the future.
7. Glenn Springs Holdings, Inc. D-76-17-2. An application to discharge treated storm and ground water into the Schuylkill River in an area that is conditionally designated as "Modified Recreational" in the Comprehensive Plan. The project is located south of State Route 422 at the former Occidental Chemical Corporation facility in Lower Pottsgrove Township, Montgomery County, Pennsylvania. Occidental Chemical Corporation remains the owner of the property, but its affiliate, Glenn Springs Holdings, Inc. is the operator of the ground and storm water treatment facility. Currently, up to 0.5 mgd of flow containing volatile organic chemicals is treated by carbon absorption and air stripping before it is discharged to the Pottstown City Sewage Treatment Plant. Approval is requested to discharge the treated effluent directly to the Schuylkill River through storm water Outfall 005, as a cost-savings measure. No increase in capacity is proposed, nor are any new production or recovery wells necessary. The industrial waste treatment plant and surface water supply intake described in DRBC Docket No. D-76-17 will remain inactive. The production (water supply) wells that were referenced in that docket will remain in use as recovery wells. The combined allocation for Recovery Wells Nos. 1, 1R, 4, 5, 6, 8, 8A, 9, 9A, 10A, A, B and C will be a total of 15 mg/30 days. The wells are located in the Brunswick Formation within the Southeastern Pennsylvania Ground Water Protected Area.

8. Borough of Alburtis D-91-42 CP-3. An application to replace the withdrawal of water from Well No. 3 in the applicant's water supply system with a withdrawal from Well No. 3A, because Well No. 3 has become an unreliable source of supply. The applicant requests that the withdrawal from replacement Well No. 3A be limited to 7.5 mg/30 days of water, and that the total withdrawal from all wells be increased to 11.487 mg/30 days from the previous allocation of 6.5 mg/30 days in order to meet projected increases in service area demand. The project is located in the Leithsville and Hornblende Gneiss formations in the Swabia Creek Watershed in Alburtis Borough, Lehigh County, Pennsylvania.
9. New Hanover Township Authority D-99-40 CP-2. An application for approval of the expansion of the New Hanover Township Authority's WWTP from 0.825 mgd to 1.925 mgd. The WWTP will continue to discharge to Swamp Creek, a tributary of the Perkiomen Creek, which is tributary to the Schuylkill River. The facility is located in New Hanover Township, Montgomery County, Pennsylvania.

Hearing no questions or comments, on Mr. Muszynski's recommendation, Lt. Col. Baker asked for a motion to approve hearing items 4, 5, 6, 7, 8 and 9. Ms. Myers so moved. Mr. Mauriello seconded her motion, and the six dockets were approved by unanimous vote.

New Projects (6). Mr. Muszynski described the remaining six projects, requesting that hearing item 17, Pocono Township, D-2006-17 CP-1 be voted on separately due to the complexity of the docket and the number of public comments received.

10. Middle Smithfield Township Municipal Authority D-73-209 CP-1. An application for the expansion and reconstruction of the existing Winona Lakes WWTP from 0.022 mgd to 0.050 mgd. The project includes the construction of a new 50,000 gallons per day (gpd) phased isolation ditch wastewater treatment facility to replace the existing 22,000 gpd extended aeration wastewater treatment facility. The expansion of the plant is to accommodate expected wastewater flows from Sections 12, 13 and 14 of the Winona Lakes community. The WWTP will discharge to the Bushkill Creek, a tributary to the Middle Delaware River Special Protection Waters. The facility is located in Middle Smithfield Township, Monroe County, Pennsylvania.
13. Bear Creek Management Company, LLC D-2005-16-1. An application for approval to construct a new WWTP to serve the applicant's Bear Creek Ski Area and to operate an on-site iron abatement system. The 0.045 mgd treatment plant will discharge to sixteen holding tanks used for post treatment equalization prior to being pumped to a drip field at a maximum daily rate not to exceed 0.035 mgd. The facility is located in the Swabia Creek Watershed, a tributary to the Little Lehigh River in Long Swamp Township, Berks County, Pennsylvania. The on-site iron abatement system will include water quality monitoring, sediment sampling, removal of iron from the water column and removal of iron precipitate from the wetland substrate. The project is located in the drainage area to a section of the non-tidal Delaware River known as the Lower Delaware, which is classified as Special Protection Waters.
14. Delaware River Joint Toll Bridge Commission D-2006-7 CP-1. An application for approval of a bridge modification project, located in a recreational area which is included in the

DRBC Comprehensive Plan. The U.S. Route 1 Toll Bridge connects the Borough of Morrisville, Bucks County, Pennsylvania with the City of Trenton, Mercer County, New Jersey and is located at the base of DRBC Water Quality Zone 1E. The bridge will be widened at a point where it passes over the Delaware Canal, formerly known as Roosevelt State Park.

15. Ingersoll-Rand Company D-2006-14-1. An application for the approval of an existing groundwater remediation discharge project located at the Ingersoll-Rand facility in Phillipsburg, New Jersey. The existing remediation system discharges approximately 0.090 mgd via Outfall 002 to Lopatcong Creek, which converges with the Delaware River at River Mile 182, within a reach classified as "Significant Resource Waters." The facility is located in the Town of Phillipsburg and Lopatcong Township, Warren County, New Jersey.
16. Spring Ford Country Club D-2006-16-1. An application for approval of a ground and surface water withdrawal project to supply up to 11.2 mg/30 days of water to the applicant's golf course irrigation system from existing Well No. 1 and up to 21.6 mg/30 days from a pond on an unnamed tributary to Mingo Creek and to limit the existing withdrawal from all sources to 21.6 mg/30 days. The project is located in the Brunswick Formation in the Mingo Creek Watershed in Limerick Township, Montgomery County, Pennsylvania and is located in the Southeastern Pennsylvania Ground Water Protected Area.

Mr. Muszynski reported that no comments were received concerning these five dockets. Hearing no further comments or questions, Lt. Col. Baker requested a motion for approval of the five dockets. Ms. Myers so moved, Mr. Mauriello seconded her motion, and hearing items 11, 13, 14, 15 and 16 were approved by unanimous vote.

17. Pocono Township D-2006-17 CP-1. An application for the construction of a new 2.0 mgd WWTP to accommodate flows from existing WWTPs and anticipated regional growth. The project includes the construction of a collection system for the Route 611 Corridor. The WWTP will discharge via an approximately 6-mile force main to the Brodhead Creek, a tributary to the Middle Delaware River Special Protection Waters. The facility will be located in Pocono Township, Monroe County, Pennsylvania.

Mr. Muszynski provided a detailed explanation of how the Pocono Township docket would ensure compliance with the Commission's Special Protection Waters (SPW) regulations, including the policy of no measurable change to existing water quality at the applicable boundary control point, located at the edge of the Delaware Water Gap National Recreation Area (DWGNRA). Mr. Muszynski touched on key provisions in the docket, including:

- a provision for the executive director to approve the final plans and specifications for the treatment plant when they are submitted to ensure that they will meet the requirements of the docket;
- provision for a five-year water quality monitoring study to inform future decisions on the phasing-in of effluent limitations;

- provisions granting the executive director the discretion to require implementation of Phase 2 effluent limits and to restrict connections if effluent limits are not being met.

Mr. Muszynski noted that the Pocono Township Regional Act 537 Special Study for the Route 611 Corridor, approved by PADEP on December 7, 2006, provides for the project as described in the docket.

Mr. Muszynski explained that in accordance with the SPW regulations, because the Pocono plant would not discharge directly to waters classified as SPW, a no-discharge analysis was not required. Nor was the plant subject to the requirement for no visible discharge plume, which applies only to new or expanded discharges directly to SPW. The plant will be subject to the standby power and emergency management plan requirements of the SPW regulations. An emergency power source must be capable of providing full power to operate the plant. In addition, as for all projects within the drainage area to SPW, a natural treatment alternatives analysis was required for the project. Natural treatment with the use of wetlands was deemed infeasible, especially because such treatment could not be utilized during winter conditions. Land application also proved infeasible due in part to limitations on the available land. Cost was a factor in the determination that these and other evaluated natural treatment alternatives would be infeasible.

The “no measurable change” analysis for the proposed plant was performed utilizing an enhanced version of the water quality model developed by Weston Associates for evaluation of the Sanofi Pasteur wastewater treatment plant expansion approved by the DRBC in September of 2006. DRBC staff recalibrated and enhanced the Weston model by using the recently updated QUAL2K platform and making additional refinements such as redistributing loadings, adjusting meteorological settings, and updating elevations to allow for additional analysis at tributary nodes.

A series of modeling computations (runs) were performed to determine the cumulative effect on existing water quality of point source loads from the approximately thirty (30) wastewater treatment plants in the watershed, including the proposed Pocono Township plant, with design discharges of 10,000 gallons per day or more. The values for existing water quality from which no measurable change is to be permitted (hereafter “EWQ”) were developed in May of 2006 from pre-1993 data. They are the same values that were used in reviewing the Sanofi Pasteur docket. The boundary control point at the edge of the DWGNRA is located approximately six miles below the discharge point of the proposed facility.

The draft docket requires that like all projects within the drainage area to waters classified as SPW, the Pocono Township plant would be subject to the requirement that a non-point source pollution control plan must be in place for new or expanded development within the service area.

Mr. Muszynski noted that the Brodhead Creek Watershed is coming under increasing pressure for new development. Two other facilities in the watershed are expected to seek flow increases in the near future. In addition, Mr. Muszynski explained that the design flows for facilities in existence as of 1992 are grandfathered. Thus, over a period of years the potential exists for the discharge of an additional 5 million gallons per day of treated effluent above that discharged in 1992 from existing facilities. Until a grandfathered facility proposes significant capital improvements or seeks to expand above its design flow, it is not subject to the SPW no measurable change requirements. Only when such a plant seeks approval for significant facility changes or expansion will the SPW regulations

require that a no measurable change analysis be performed. At such time, plant loadings can be reduced to levels at which EWQ can be sustained.

Mr. Muszynski described two of the model runs performed for the no measurable change analysis. The first was conducted using grandfathered flows from each of the existing plants in order to determine whether EWQ at the boundary control point can be sustained if all of the existing plants discharge at their grandfathered loads. Flows from the proposed Pocono Township plant were not included in this run. The results demonstrate that for nitrates and ammonia, the EWQ would be exceeded under the assumed conditions.

The net effect on EWQ of adding the discharge from the Pocono Township facility was then determined by modeling the impact of the potential discharges from existing facilities together with the discharge from the proposed plant. This run demonstrated that in addition to causing further exceedences of the EWQ values for ammonia and nitrates, the additional flows from the Pocono Twp. facility would result in a slight exceedence of the EWQ for biological oxygen demand (BOD). However, the predicted BOD value is not considered a meaningful water quality change.

Pocono Township's original submission to the DRBC provided for a 2 mgd plant with an effluent containing 3 mg/l of ammonia and 12 mg/liter of nitrate. These concentrations would substantially increase the predicted exceedence of the EWQ values for ammonia and nitrates. After a variety of modeling exercises using reduced effluent nutrient allowances for Pocono Twp., the DRBC is proposing to phase in successive limits for each parameter. The draft docket establishes three phases:

1. Phase 1: For operation of the plant at up to 1 million gallons per day, the effluent limits for ammonia and nitrates are 3 mg/l and 8 mg/l respectively. At these concentrations, assuming maximum potential loads from all plants in the watershed, the model predicts an exceedence of the EWQ for nitrates of .04 mg/l and an exceedence of the EWQ for ammonia of 0.01 mg/l. No actual exceedence is likely, however, since all existing plants are not expected to reach their grandfathered loads during this phase.
2. Phase 2: For operation of the plant at above 1 million gallons per day, the effluent limit for ammonia is reduced from 3 mg/l to 2 mg/l and the limit for nitrates is lowered from 8 mg/l to 6 mg/l. At these concentrations, the model again predicts only slight exceedences of the EWQ for ammonia and nitrates under the condition in which all existing plants are discharging their grandfathered loads.
3. Phase 3: Finally, at the Executive Director's direction, the ammonia limit will be reduced from 2 mg/l to 1.5 mg/l, and the nitrate limit will be reduced from 6 mg/l to 4 mg/l. These concentrations will very nearly ensure no net increase above EWQ under the condition in which all existing plants are discharging their grandfathered loads.

The treatment cost to achieve the Phase 3 nutrient limits is high. Thus, additional data will be collected to confirm the model results before these limits are imposed. The effluent limits for parameters other than ammonia and nitrates are not proposed to be phased.

When DRBC performed its modeling analysis, it discovered that discharge data were unavailable for loadings of total phosphorous, ammonia and nitrates from the existing facilities in the Brodhead Creek Watershed. DRBC relied upon data from comparable New Jersey facilities to fill the gaps. To improve the accuracy of its model, the Commission wishes to obtain actual data from facilities in the Brodhead for these parameters. The Pocono Township docket includes a monitoring requirement for the three nutrients. At its February 28th meeting, DRBC will hold a hearing on a proposal to require the other 29 dischargers in the watershed to monitor their effluent for the same parameters if they are not already doing so. The data will help to further refine the model, and when a facility seeks approval in the future to modify or expand, the Commission will have a much better tool with which to conduct its evaluation.

Additional instream water quality data are needed for ammonia and BOD as well, because the existing data, which show “non-detects” for both parameters, were obtained with analytical methods insufficiently sensitive to detect the EWQ. The model predicts that instream levels will exceed the EWQ for both parameters. Pocono Township has agreed as a condition of its approval to perform instream water quality monitoring at reduced detection levels to help further refine and calibrate the BC-WQM model. The monitoring program, to be approved by the executive director, will entail the collection and analysis of four samples per year from each of five locations for a period of five years. Each year, the new data will be submitted to the DRBC and run through the model to confirm that the no measurable change requirement is being met.

The Commission received approximately ten letters opposed and ten letters in support of the project. A number of opponents said that preferable alternatives existed, citing one or more of the approximately one dozen alternatives to the proposed project identified in the Pennsylvania Act 537 Plan. They objected to approval of a new discharge in an area heavily used for recreation; and they expressed concern that the project would create the potential for flooding downstream. Some opponents feared that Pocono Township’s discharge to the Brodhead Creek might increase the cost of expanding Stroud Township’s and Stroudsburg’s treatment plants. Others feared the collection system and force main might carry peak flows in excess of 2 mgd and that additional excess capacity would be created if Sanofi Pasteur eventually were to treat its own wastewater. They are concerned that such capacity could induce additional development in the area. Some objectors said the project would be too expensive. Some feared that it could adversely affect public water supply wells. Other comments concerned the need for wastewater treatment for the commercial corridor and potential impacts on watershed balance.

The DRBC staff believes that the alternatives to the proposed project were sufficiently analyzed and were rejected for valid reasons, including in some cases high cost. Mr. Muszynski explained that the alternative of discharge to the Pocono Creek, which was frequently cited by objectors, was in his view warranted because the state’s High Quality water classification forbids new discharges to the Pocono, and if an exception to the rule were obtained, the treatment level required would be prohibitively expensive. He said that the state NPDES permit limits are designed to be protective of recreational use of the Brodhead, and DRBC’s limits are designed to ensure no measurable change in water quality at the boundary control point, where the Brodhead Creek intersects the western boundary of the DWGNRA. The docket incorporates the more stringent of the two limits wherever they differ. Moreover, the executive director will require the more stringent Phase 3 effluent limits for ammonia and nitrates based upon monitoring information obtained in accordance with the docket.

In response to the concern that the discharge would contribute to flooding downstream, Mr. Muszynski said that a 2 mgd flow from the proposed plant would constitute approximately 6 to 7 percent of the low flow of the creek. Under flooding conditions, flow from the treatment plant would represent a substantially smaller percentage of the creek's total flow. Regarding the concern that Stroud and Stroudsburg townships might need to pay more to treat discharges to the Brodhead as a result of Pocono Township's discharge, Mr. Muszynski said that the docket requires Pocono Township to mitigate its impacts on existing water quality; no other discharger will be required to bear that burden.

In response to objections concerning the force main, Mr. Muszynski noted that stream crossings by the main are minimized, as the route primarily follows highway rights of way. In addition, such crossings are protected by state permit conditions. Regarding capacity, he said the force main is a pressure line rather than a gravity line and is designed to accommodate peak flows greater than 2 mgd. As for the possibility that Sanofi Pasteur might eventually treat its own waste, Mr. Muszynski explained that Sanofi's discharge represents only approximately 350,000 gallons of the plant's 2 million gallon capacity, and that a separate discharge by Sanofi would require permission for discharge to a Pennsylvania High Quality stream, where new discharges are ordinarily prohibited.

In response to concerns about the high cost of the proposed plant, Mr. Muszynski said that the cost of protecting existing water quality at the boundary control point, though expensive, was not deemed prohibitive. Concerning the impact on water balance in the watershed, he explained that some water would be shifted from the Pocono Creek Watershed to the Brodhead. Although the Commission regulates transfers in or out of the basin, however, neither DRBC nor Pennsylvania forbids transfers within a watershed.

In conclusion, Mr. Muszynski said that he believes the analysis performed by DRBC staff using the BC-WQM demonstrates that the proposed docket will satisfy the SPW policy of no measurable change to water quality at the boundary control point. Monitoring requirements in the Pocono Township docket and a monitoring program to be proposed in February for other dischargers in the Brodhead Creek Watershed will provide the data needed to confirm this.

Lt. Col. Baker thanked Mr. Muszynski for his presentation. She then invited comment from members of the audience who had requested to speak. The comments offered at the hearing are summarized here or are attached. Messrs Gerald E. Depo and Mark Pickering, both of Stroudsburg Borough, withdrew their requests to comment.

Mr. James Phillips of East Stroudsburg Borough said that his municipality was concerned about the location of the proposed discharge, which would be piped six miles from Pocono Township and discharged in the middle of the urban East Stroudsburg-Stroudsburg area of the Brodhead Creek. In his view, piping treated effluent over six miles to a neighboring sub-watershed is unprecedented. Mr. Phillips said that the Borough knew Sanofi's need was driving the project and that his municipality neither objected to nor disagreed with the need to facilitate Sanofi's expansion. He nevertheless stated that it did not seem like good public policy to send sewage from one creek to another, especially when other state agencies had invested in recreational projects in the vicinity of the proposed discharge point.

Theresa Merli, President of the Brodhead Watershed Association (BWA) said that her verbal comments were intended to supplement written comments that she had submitted previously. A transcript of her oral testimony is included in the Attachment to these Minutes.

Mary Ellen Noble of the Delaware Riverkeeper Network (DRN) expressed concern over the growth-inducing aspects of the Pocono Township project. A transcript of her testimony also is provided in the Attachment. Ms. Noble is apprehensive about the impacts of the nonpoint source pollution that she and her organization fear will accompany new development along the Pocono Creek commercial corridor as a result of construction of the proposed six-mile force main and 2 mgd plant. Ms. Noble also is concerned that the settlement reached in a dispute between the DEP and Monroe County's supervisors over the county's Act 167 (stormwater management) plan will result in a plan that is insufficiently protective of the Pocono Creek and other streams in the county, because it lacks a buffer requirement included in the plan originally approved by the DEP. DRBC has said that the Act 167 Plan approved in accordance with the settlement between the county and PADEP will satisfy the nonpoint source control plan requirement of the Commission's SPW regulations. Municipalities have six months to adopt ordinances that conform to the new Act 167 plan, and another of Ms. Noble's concerns is that development will move forward during the six-month adoption period. DRBC's regulations require only that the nonpoint source control plan (in this case, the Act 167 Plan) be in place before new sewer connections are allowed – not that the plan be in place before construction of new development begins.

Samuel M. D'Alessandro, the Pocono Township Engineer, responded to Ms. Noble's concerns by explaining that the proposed force main and treatment plant would not be completed and available until 2010. He added that in Pennsylvania, in order for a developer to obtain a building permit, a sewage system must already be in place to serve the new development. Since it will take eighteen months to construct the proposed treatment system after permits are obtained, Mr. D'Allesandro said that the Act 167 Plan would be in place before any additional development within the corridor could begin.

Patrick Ross, Chairman of the Board of Supervisors of Pocono Township, strongly endorsed the proposed sewer project. He remarked that as a citizen of Monroe County for more than 46 years and a member of the Pocono Township Board of Supervisors for 29 years, he has seen the landscape and needs of the county change. He said the township supervisors believe the community must be proactive in building a stronger future. In that spirit, he explained, the supervisors take pride and satisfaction in the project, which has been in the making for four-and-a-half years. Their experience in planning the project, he said, underscores the importance of partnerships between public and private entities, municipalities and environmental and economic development experts. In this case, the result of such combined efforts in his view is a viable, feasible, environmentally sound, and cost-effective plan. On behalf of the Pocono Township supervisors, Mr. Ross thanked the commissioners and staff for their time, consideration and hard work.

After an extended discussion among Mr. Gast of PADEP, Mr. Muszynski of DRBC, Commissioner Myers, Craig Wilson, Esquire on behalf of Sanofi Pasteur, and Pamela Bishop, Esquire of PADEP, about the wording of condition "y" of the docket, it was agreed that the Chair would provide a break from the hearing to allow PADEP and DRBC staff to agree upon revised language for condition "y" that would unambiguously conform to a provision of the Act 537 Plan that prohibits the docket holder from allowing certain connections in the absence of an alternatives analysis.

Ms. Bishop provided a status report on the Brodhead-McMichaels Creek Watershed Act 167 Stormwater Management Plan Update ("Plan Update"). Ms. Bishop explained that the county submitted the Plan Update to PADEP in December of 2005 and PADEP approved the Plan Update in March of 2006. However, she said, the county then filed an appeal of PADEP's approval to the Pennsylvania Environmental Hearing Board. Settlement discussions ensued, and the parties reached an agreement on December 6, 2006, pursuant to which the county adopted and approved an amendment to the Plan Update and submitted this to DEP. By letter to the county dated December 12, 2006, effective immediately, DEP approved the county's amendment. In accordance with Pennsylvania Act 167, DEP's approval triggers the statutory requirement that each township within the watershed adopt a stormwater ordinance consistent with the approved Update Plan (a "conforming ordinance") within six months. The plan and ordinance are referenced in condition "t" of the docket. Ms. Bishop also noted that Act 167 requires all landowners within a watershed for which an Act 167 plan has been approved to construct their projects in conformity with that plan, even if they proceed in advance of adoption of a conforming township ordinance. Accordingly, when PADEP reviews an application for a Phase 2 stormwater permit, which is a NPDES permit for the discharge of stormwater during construction, the state agency will review the project for consistency with the state-approved Act 167 Plan, regardless of whether a conforming ordinance has yet been adopted by the municipality. Ms. Bishop said that in her view, condition "t" of DRBC's docket also reinforces the need for projects to conform to the approved Act 167 Plan, whether or not a municipal ordinance is yet in place. She said that there is thus a good synergy between the docket requirement and the state's interest in implementation of the Act 167 Plan.

For the record, Ms. Bishop read the following paragraph approved by Monroe County and the Commonwealth as an amendment of the Plan Update. She said the paragraph was intended to follow the paragraph beginning Section 303.1 Buffers:

"If a municipality chooses not to implement the riparian buffer provision in the Stormwater Management Plan as suggested in the plan's model stormwater ordinance, the municipality must obtain the approval and concurrence of DEP for equivalent ordinance provisions that meet the water quality requirements. The municipality must then adopt and implement a stormwater ordinance with the approved modifications in accordance with the Brodhead-McMichaels Creek Stormwater Plan."

Ms. Bishop said that in DEP's view the settlement did not materially change the requirements of the original Plan Update.

Mr. Mauriello asked whether Act 167 plans include a quantity component in addition to addressing water quality. Ms. Myers answered that PADEP's authority to manage runoff volume derives from the Pennsylvania Clean Streams Law. Because degradation is occurring in streams as a result of nutrient and sediment runoff, she said, PADEP considers volume control to be a component of a water quality analysis. A major change in PADEP's program, which is reflected in its new BMP manual, she added, is the use of a framework for analyzing velocity, volume and peak rate of runoff rather than focusing on peak rate of runoff alone, as was the practice for about twenty years.

Ms. Noble asked which entity or entities had the authority to enforce the stormwater management requirements: the mayor, the township supervisors, the conservation district, PADEP, or the DRBC? Ms. Myers replied that multiple authorities could enforce the requirements. The municipality can enforce its ordinance through the police power. PADEP can enforce its NPDES and Phase 2 permits. The Conservation District is most sophisticated and involved in the implementation of post-construction stormwater controls and would likely be helpful in enforcing post-construction requirements. Ms. Noble said that she and her organization are looking to the township to take speedy action to adopt an ordinance consistent with the new Act 167 Update Plan.

Mr. Ross noted that he sits on the Board of Directors of the Monroe County Conservation District and is interested in seeing the regulations strictly adhered to. Asked by Ms. Noble whether he would be acting expeditiously in adopting the conforming ordinance, Mr. Ross replied that concerned citizens have his phone number.

After a 10-minute break in the hearing on Docket D-2006-17 to allow PADEP and DRBC staff to revise the language of condition “y”, Lt. Col. Baker resumed the hearing. The revised condition “y” now provides that the docket holder shall not approve any connections from individual properties except in accordance with a series of conditions, which Mr. Muszynski recited from the revised draft docket.

Lt. Col. Baker invited further comments concerning the revised language of the docket. Hearing no further comments or questions, she requested a motion to approve the docket as amended. Ms. Myers moved that docket item number 17 be approved with the amended condition “y”; Mr. Mauriello seconded the motion, and the Pocono Township project was approved by unanimous vote.

Public Hearing: Resolution to Re-Authorize the Monitoring Advisory Committee. Mr. Tudor explained that the Monitoring Advisory Committee (MAC), one of the Commission’s several standing advisory committees, was created by Resolution No. 1999-25 for the purpose of maximizing coordination and cooperation among federal and state agencies and other organizations that conduct monitoring within the basin. The resolution provides for the MAC to be composed of 15 members from diverse sectors of the basin community. Mr. Tudor said the committee has been effective in ensuring that monitoring activities undertaken by a variety of different entities are complementary. He noted that Resolution No. 1999- 25 contained a 5-year sunset provision and the Commission’s authorization had thus technically expired. The proposed resolution would reauthorize the MAC as currently constituted for another five-year period. Re-authorization would ensure that the committee would be available to assist in the development of nutrient criteria, among other matters.

Mr. Tudor explained that the sunset provision helps to ensure that the charge and composition of a committee are periodically reevaluated. He noted that in the view of staff the MAC has functioned well with its current mix of state and federal agency representatives and members from academia, agriculture, the field of aquatic biology, the volunteer water quality monitoring community, the regulated community and land use planning.

Hearing no further questions or comments, Lt. Col. Baker called for a motion to adopt the proposed resolution re-authorizing the Monitoring Advisory Committee. Dr. Otto so moved, Mr. Klotz seconded his motion, and Resolution No. 2006-24 was approved by unanimous vote.

Resolution to Adopt the 2007-2012 Water Resources Program. Adoption of an annual Water Resources Program (WRP) is a requirement of the Delaware River Basin Compact. Dr. Najjar explained the relationship of the WRP to the Basin Plan and other DRBC plans. The WRP is a rolling six-year strategic plan that sets the agenda for DRBC's work effort toward achieving goals adopted in September 2004 by the governors and federal agency leaders in the comprehensive 30-year Basin Plan. The Commission's annual work plan (and individual work plans) and budget flow from the six-year WRP. The activities comprising the WRP are arranged in five key result areas (KRAs), corresponding to the five KRAs in the Basin Plan. A brief narrative provided at the front of the WRP document is followed by a matrix of programs and activities covering the six-year period. Potential or known funding sources and lead branches of the agency are provided for each activity. A recap of FY06 accomplishments is included in this year's plan.

Dr. Najjar summarized the Commission's WRP initiatives within each of the five KRAs – sustainable water supply; water corridor management; linking land and water; intergovernmental relationships; and education and outreach. He noted that the program had been amended to include comments submitted by the states and federal agencies, and he asked the Commission to approve the FY 2007-2012 Water Resources Program.

Hearing no further questions or comments, Lt. Col. Baker called for a motion to approve the proposed resolution adopting the 2007-2012 Water Resources Program. Dr. Otto so moved, Mr. Klotz seconded his motion, and Resolution No. 2006-25 was approved by unanimous vote.

Add-On: Resolution Authorizing the Executive Director to Secure Professional Investment Services Consistent with the Delaware River Basin Commission Investment Policy. Mr. Gore explained that the Investment Policy adopted in July 2001 provides direction for management of the Commission's funds. The policy provides that the Commission will maintain a list of financial institutions authorized to furnish investment services. Currently, two such institutions are authorized. Over the course of several months the Commission staff in 2006 secured proposals from four additional financial services firms and interviewed representatives from each. It now recommends that the Commission add the Wilmington Trust Company as an institution authorized to furnish the Commission with investment services. Mr. Gore noted that Mr. James J. Palermo, a Vice President of Wilmington Trust, would be the Commission's key contact in its relationship with the firm.

Hearing no further questions or comments, Lt. Col. Baker called for a motion to adopt the proposed resolution authorizing the executive director to secure professional investment services consistent with the Delaware River Basin Commission Investment Policy. Ms. Myers so moved, Dr. Otto seconded her motion, and Resolution No. 2006-26 was approved by unanimous vote.

Lt. Col. Baker opened the floor to comment on any matter of concern to any member of the public. Hearing none, she adjourned the Commission's business meeting at 4:20 p.m.

/s/ Pamela M. Bush

Pamela M. Bush, Esquire, Commission Secretary

**TRANSCRIPT
Of Testimony Concerning Docket D-2006-17 CP-1**

Statement of Theresa Merli, Brodhead Watershed Association

As I was going through many of the documents that I've been reading for the past ten months there was one particular sentence from one particular document that kept replaying in my mind. That sentence was the last sentence of a letter written to us by the Pocono Township Board of Supervisors in response to our request for an extension of the public comment period back in February. That sentence reads, "We would like to move forward with this plant as we feel that this is very important to health, safety and welfare of the township, county, Commonwealth and the United States. The signers of this document were genuine in this expression of their intention to do what they believe and what they continue to believe is the right thing to do. What started with the genuine and appropriate good intentions of community leaders responding to the needs of a valuable community member has evolved into a project with impacts on the community at large including name-calling that no one would have foreseen and not a single shovel full of dirt has been turned. What began as the goal of helping Sanofi Pasteur dispose of additional wastewater became a plan that was advertised as a sewage treatment plant built to process 1.3 million gallons per day. That 1.3 mgd plan was advertised on January 18th. No public hearing was required by DEP regulations for this project, but to their credit Pocono Township did hold a public meeting in April. At that meeting the public learned that the plan was now for a plant that could process 2 million gallons per day with a collection system capable of handling 3 million gallons per day. The needs for Sanofi at that point were for 350,000 gallons. The pressure for the growth of this project continues to this day. Property owners speculating that they might develop or further develop properties along the route of the collector pipes continue to express interest in this project. I recently learned that an existing restaurant is now interested in expanding that restaurant and adding a 125-room hotel. The momentum of the already occurring sprawl – commercial sprawl in this case – has been energized by this project, again long before a single shovel of dirt has been turned. BWA has argued against this project precisely because sewer lines are notorious for energizing sprawl. Sprawl has been identified as a major contributor to the decline of Pennsylvania economic health by the Brookings Institute among others and they're back to prosperity with a competitive agenda for renewing Pennsylvania. This report contends that the economic future of the state depends on revitalizing its demographic mix and curbing what are some of the nation's most radical patterns of sprawl and abandonment. This report concludes that these patterns are not inevitable and can be reshaped if the State embraces a dynamic new vision of economic competitiveness. This new vision is summed up in the phrase "sustainable development." Sustainability is defined on the EPA website as the ability to achieve continuing economic prosperity while protecting the natural systems of the planet and providing a high quality of life for its people. In the past several months I've had the opportunity to speak with and learn from many of the staff members from the DEP and the DRBC. I can't tell you how much I appreciate the time and the patience of staff from both regulatory bodies that they've given to me and other BWA members. I've learned to have a better understanding of the many challenges they face as well as their understanding of what each of these regulatory bodies can and cannot do. That being said, I submit for comment the following addition. I submit these comments in addition to the written comments sent some weeks ago.

Brodhead Watershed Association understands that the Delaware River Basin Commission bases its decision solely on whether the discharge will cause a measurable change at the boundary control point. We understand that a model was developed during the review – the Brodhead Creek water quality model that was referenced . . . it was developed during the review for a permit for Sanofi Pasteur. That was used to determine whether there will be a measurable change from this new discharge. We are concerned that the model may be flawed in that it does not take into consideration nonpoint source impacts. It is well known that nonpoint source pollution is the major contributor to stream degradation nationwide. We are concerned that DRBC may be relying on NPDES Phase 2 permit requirements to control nonpoint source pollution from post-construction activities. If that is the case then there will definitely be nonpoint source impacts from all of the development that will occur when earth disturbance is less than one acre. Development that is less than one acre is not covered by the NPDES Phase 2 permit requirements. In much of its length the Pocono Creek, a High Quality stream, runs right along the side of Route 611. Route 611 goes right to Philadelphia [and was] built over 200 years ago when they followed the stream beds with their wagons. This is a riparian zone. It is a riparian area and this riparian area is zoned almost exclusively commercial. Current commercial zoning allows for a greater percentage of impervious surfaces than other zones. In many cases already existing development has parking lots paved right up to the edge of the creek. A strong, truly protective stormwater ordinance is necessary to ensure that the runoff from development will stay out of the Pocono Creek. The last paragraph on page 12 of the docket requires both Pocono and Hamilton townships to adopt stormwater ordinances that implement the Brodhead Creek Watershed Act 167 Plan within six months of their DEP approval of their permit. The docket references an Act 167 Plan that was approved by DEP on March 10, 2006. It is our understanding that that version was challenged by the county commissioners. It was appealed. The Act 167 that was approved last week by Monroe County commissioners has changes of substance to it since March 10th of this year through a settlement with DEP specifically referring to riparian buffers. BWA suggests respectfully that the Commission postpone a decision on this docket until a stormwater ordinance with strong truly protective nonpoint source controls is in place. BWA is concerned by the fact that the regional comprehensive plan is often used to justify this project while the lead township for the sewer project has refused to sign the inter-municipal agreement, the enabling document of the regional plan. This project, while it reflects some parts of the comprehensive plan is far from a regional decision which is a requirement of that same regional comprehensive plan. Three of the municipal partners involved in crafting the regional plan strongly object to the sewer project. A pipeline from the treatment plant is proposed to run for approximately six miles through the heart of a neighboring township that objects to it. As you are aware, the discharge from the treatment plant will terminate from Brodhead Creek in a regional park at a point that sees some of the heaviest recreational use in the county. This discharge will over time degrade the greenway park recreational resource. Efforts of downstream neighbors to regionally cultivate an existing recreation area are trumped by an upstream neighbor's need to enhance the valuable economic resources and ability to be competitive in the future.

What is proposed can be defended from a regulatory viewpoint, but is it the right thing to do? It has become apparent to many of us that dockets and permits are not necessarily issued because they're the right thing to do but because that is what was proposed. We review what is submitted and we tweak it until it fits our regulatory systems. We justify our decisions according to our regulations. We practice regulatory sense instead of practicing common sense. BWA again suggests that the Commission postpone a decision on this docket until a stormwater ordinance with strong, truly

protective nonpoint source controls are in place. That way we can at least minimize the degradation on the Pocono Creek that will occur because of the sprawl that will inevitably develop.

Regardless of the decision that the Commission makes today, BWA stands ready, willing and able to partner with DRBC and the EPA on the project we've been invited to participate in, the Sustainable Watershed Management in the Delaware River Basin Project. This is an EPA-funded project and it's our understanding that the research findings and the results of this pilot project will be transferable to other parts of the basin as well as to other areas of the nation. This pilot project is the process of evaluating the effects of growth and land use change on groundwater, stream flow and the ecology of the Pocono Creek. Ironically this project focuses on the Pocono Creek Watershed with the goal of developing sustainable water resource management strategies in a watershed that is threatened by high growth. It is BWA's hope that the results of this pilot study will be truly helpful for enabling communities all over the country to develop in a sustainable manner even if the Pocono Creek Watershed becomes a model of what not to do. In that way what we do may be beneficial to other communities even if it's too late to help our own to plan for that same sustainable future. Thank you very much for indulging this lengthy verbal comment.

Statement of Mary Ellen Noble, Delaware Riverkeeper Network

The Delaware Riverkeeper Network has been concerned with the new regional plant in this area and its growth inducing aspects. We very much admire the proactive and very detailed, intelligent review that your staff has done. They've put a tremendous amount of effort into making sure that the Special Protection Waters regulations are carried out both in spirit and in the letter. Recently I've come to understand from the Brodhead people that this narrow valley that the highway runs up which is just a commercial area to be developed and send its sewage out is not going to be covered by riparian buffers as were proposed by the initial 167 Plan. This is all about nonpoint source loads and whether we are going to be creating the kind of nonpoint source loads that are going to damage existing water quality by having approved a point discharge which meets our existing water quality regulations. So we have this narrow valley and a lot of commercial development in it and a 167 Plan that first had buffers and was approved and then the state said yes put buffers in it and then somehow it ended up without the kind of buffers they started out with. I'm not exactly sure how that happened but evidently we've got a settlement between the state and the county on a 167 Plan which is what DRBC's regulations rely on seeing that the service area of a project like this is going to meet the nonpoint source regulations. I'm puzzled about how the township now has six months to pass their ordinances and I can see a scenario where that hotel wants to make a 125-room hotel, and I see DRBC wants to approve it, call in the contractor and we'll break ground. How can we be sure that in this very sensitive and difficult area we're getting the best in the way of nonpoint source protection because the township hasn't passed anything? DRBC's condition "it" says that the docket holder will approve no connections for any service area development without confirmation that we've got an approved nonpoint source plan. I don't care about connection, I'm just ready to go right ahead and prepare my site. If this is a township that is running a little shy of nonpoint source regulations and hasn't adopted its ordinance under the Act 167 Plan, how are we getting our coverage here?